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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,934	03/02/2004	Jay S. Walker	03-026	3244

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EXAMINER	
RUSTEMEYER, MALINA K	
ART UNIT	PAPER NUMBER
3714	
MAIL DATE	DELIVERY MODE
11/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,934	WALKER ET AL.	
	Examiner	Art Unit	
	Malina K. Rustemeyer	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14,33 and 34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14,33 and 34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to applicant's response filed on 7/23/09. Applicant amends claims 1, adds claim 34 and responds to rejections. Claims 1-14, 33, and 34 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-14, 33 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 states "wherein at least one attribute of the bonus game is different than the at least one attribute otherwise would be if entry to the same bonus game was not provided based on the first time matching the second time". It is unclear to the Examiner how at least one attribute of the bonus game is different than the at least on attribute otherwise, and the bonus games are the same. If there are any different attributes in a game, then they are different games, not the same games. Claims 2-14, 33 and 34 all depend on claim 1 and therefore are indefinite as well.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 5-8, 10, 13, 33, and 34, are rejected under 35 U.S.C. 102(b) as being anticipated by Acres et al. (US 5655961).

Concerning claim 1, Acres et al. teaches a method comprising: determining, via a processor of a device operable to facilitate a wagering game **[column 25, lines 4-37]**, a first time; determining, via the processor, a second time; and causing, via the processor, a gaming device to enter a bonus game, based on the first time matching the second time, **[column 25, line 38- column 26, line 24]** wherein at least one attribute of the bonus game is different than the at least one attribute otherwise would be if entry to the same bonus game was not provided based on the first time matching the second time **[column 25, line 38- column 26, line 24]**. **A bonus game is interpreted as a game in which enhanced bonus payouts are outputted.** Any game that awards a bonus payout is a bonus game. The mystery jackpot and bonus time jackpot at least one different attribute based on the method of entry. The two bonus games and are within the same gaming device relating to the same primary game.

Concerning claim 2, Acres et al. teaches a first time includes determining a reference time; and wherein determining a second time includes determining a current time **[column 25, line 38- column 26, line 24]**.

Concerning claim 5, Acres et al. teaches including determining a type of bonus game deterministically **[column 25, line 38- column 26, line 24]**.

Concerning claim 6, Acres et al. teaches determining whether a player has satisfied at least one criterion; and wherein providing includes providing, based on the first time matching the second time and the determining of whether the player has satisfied the at least one criterion, entry into the bonus game **[column 25, line 38- column 26, line 24]**.

Concerning claim 7, Acres et al. teaches determining whether a player has satisfied at least one criterion includes determining whether the player has made a specified number of handle pulls at a gaming device **[column 25, line 38- column 26, line 24]**.

Concerning claim 8, Acres et al. teaches determining whether a player has satisfied at least one criterion includes determining whether the player has made a specified number of handle pulls at a gaming device within a time interval beginning a specified period of time prior to the first time, and ending with the first time **[column 3, lines 13-37 and column 25, line 38- column 26, line 24]**.

Concerning claim 10, Acres et al. teaches determining whether a player has satisfied at least one criterion includes determining whether the player has wagered, at a gaming device, an amount of currency whose aggregate value equals or exceeds a specified value, within a time interval beginning a specified period of time prior to the first time, and ending with the first time **[column 25, line 38- column 26, line 24]**.

Concerning claim 13, Acres et al. teaches includes providing, based on the first time matching the second time, entry into a bonus game independently of any prior outcomes generated **[column 25, line 38- column 26, line 24]**.

Concerning claim 33, Acres et al. teaches wherein the at least one attribute of the bonus game comprises at least one of a prize, a payout, and a win probability **[column 25, line 38- column 26, line 24]**.

Concerning claim 34, Acres et al. teaches wherein the device operable to facilitate the wagering game is the gaming device **[Abstract]**.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 3, 4, 8, 9, 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acres et al. (US 5655961).

Concerning claims 3 and 4, Acres et al. teaches determining a first time includes determining a beginning of a next hour and/or determining a time that is a predetermined number of minutes before a beginning of a next hour **[column 25, line 38- column 26, line 24]**. Acres et al. teaches the bonus time schedule can be modified to encourage gaming activity. Setting the schedule to a beginning of a next hour and minutes before a beginning of a next hour are obvious variants and considered design choice to one of ordinary skill in the art.

Concerning claims 8 and 9, Acres et al. teaches determining whether a player has satisfied at least one criterion includes determining whether the player has made a specified number of handle pulls at a gaming device within a time interval beginning a specified period of time such as one hour prior to the first time, and ending with the first time **[column 3, lines 13-37 and column 25, line 38- column 26, line 24]**. Acres et al. teaches the bonus time schedule can be modified to encourage gaming activity. Setting the schedule to a beginning of a next hour and minutes before a beginning of a next hour are obvious variants and considered design choice to one of ordinary skill in the art.

Concerning claims 11, 12 and 14, Acres et al. teaches determining whether a player has satisfied at least one criterion includes determining whether the player has: paid in taxes to a gaming device, an amount of currency whose aggregate value equals or exceeds a specified value, within a time interval beginning a specified period of time

prior to the first time, and ending with the first time and/or a specified average rate of play at a gaming device within a time interval beginning a specified period of time prior to the first time, and ending with the first time, and/or paid a fee to a gaming device in exchange for insurance that the player will be provided entry into a bonus game **[column 3, lines 13-37 and column 25, line 38- column 26, line 24]**. Acres et al. teaches improved player tracking by recording each and every machine transaction including time of play, machine number, duration of play, coins in, coins out, hand paid jackpots and games played. The player tracking is conducted over the same network as the accounting data is extracted. This allows the invention to provide bonusing to certain individual players as well as during certain times. As with standard player tracking, the above-described system monitors and reports how many coins are played by each player. The system according to the invention, however, also includes the ability to record how long each player spends at each machine and the number of coins won, games played, and hand jackpots won by each player. Taxes paid to a gaming device, an average rate of play and paying insurance are all obvious variants to duration of play, coins in, and hand paid jackpots and are considered design choice to one of ordinary skill in the art.

Examiner's Note

9. The referenced citations made in the rejection(s) above are intended to exemplify areas in the prior art document(s) in which the examiner believed are the most relevant to the claimed subject matter. However, it is incumbent upon the applicant to analyze the prior art document(s) in its/their entirety since other areas of the document(s) may be relied upon at a later time to substantiate examiner's rationale of record. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that

would lead away from the claimed invention. W.L. Gore & associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). However, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Response to Arguments

10. Applicant's arguments filed 7/23/09 have been fully considered but they are not persuasive. The Arguments refer to amended claim language, please see newly cited sections in above rejection.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Malina K. Rustemeyer whose telephone number is (571)270-1297. The examiner can normally be reached on Mon. - Thurs., 7 AM - 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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